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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE CRIMINAL JURISDICTION

CRIMINAL APPEAL NO.634 OF 2002

1) Prakash Bandu Patil)
Aged 23 years, Occ: Agriculturist)

2) Bapusaheb Bandu Patil)
Aged 29 years, Occ: Agriculturist)

both residents of Mahe, Tal.:)
Karveer, District : Kolhapur)

At present lodged in Kolhapur)
Central Prison, Kalamba, Kolhapur.).. APPELLANTS

VERSUS

State of Maharashtra).. RESPONDENT

Mr.S.A. Ingawale for the Appellants.

Dr.F.R. Shaikh, Additional Public Prosecutor,
for the Respondent.

CORAM: V.G. PALSHIKAR AND
SMT. NISHITA MHATRE, JJ.

DATED: 8TH NOVEMBER, 2006.

JUDGMENT : (PER SMT.MHATRE, J.)

. The Appellants, who are accused Nos.3 and 6 respectively, have challenged the judgment and order of the Sessions Court in so far as it convicts them for the offence punishable under Section 302 of the Indian Penal Code and punishes them with life prisonment.

2. The incident has occurred on 29th October 2000 at about 8.00 a.m. The entire dispute apparently has arisen because accused Nos.1 to 4 and 6 who are brothers

and the sons of accused No.5 objected to the deceased cutting grass on the boundary separating their land and the land owned by the family of the deceased. On the previous day i.e. on 28th October 2000, accused No.3 had an altercation with the deceased at about 10.30 in the morning which was witnessed by their neighbours. The mother of the deceased Shirmabai also witnessed the quarrel and separated the deceased and the accused Nos.3 and 4. She then went to the house of the accused to request their mother, accused No.5, to restrain her sons from quarrelling with the deceased. It appears that this act on the part of the complainant irked accused Nos.3 and 4 who, when armed with sticks, threatened the complainant and her son. Again people around intervened and fortunately there was no untoward incident on that day. However, on 29th October 2000, the deceased, Netaji had gone to the field known as Gerwat as usual. This field was owned by his family. He was tying the grass which had been chopped into bundles. Accused No.3 armed with an axe and accused No.6 carrying a sickle went near Netaji. Accused No.3 gave him a blow with an axe on the head. Netaji raised his hand to ward off the blows, when accused No.6 struck him with a sickle on the fingers. Accused No.4 also hit Netaji with a stick. Shirmabai, Netaji’s mother, saw the accused assaulting Netaji and shouted to her son to run into the village. Netaji started running towards the village and was chased by accused Nos.3 and 6 as well as accused No.4.

He was then struck again by the accused. As a result his left hand was severed from his body. He sustained another injury on his head and collapsed. Shirmabai, who had followed him, raised a hue and cry. The accused ran away from the scene of offence. People gathered around the victim who died with the fatal assault on him. The Sarpanch of the village on learning of the attack telephoned the police and informed them about the assault on the deceased. He also told them that accused No.6 was injured and had been removed to the hospital. The necessary panchanamas were drawn up. The blood stained sickle and other articles including the bundle of grass and pieces of wood which were blood stained were seized from the spot. A post mortem examination was conducted. The accused were arrested. Their clothes and the weapons used by them were seized. Shirmabai lodged her complaint against the accused immediately after the attack. The wife of accused No.6 filed a complaint late at night against Netaji. This could not be processed as it abated because of the death of Netaji.

3. The trial Court has convicted accused Nos.3 and 6 while acquitting the other accused.

4. The prosecution has examined sixteen witnesses in support of its case. PW4 is the mother of the deceased and the complainant in this case. She has

narrated the incident as it occurred. She has spoken about the incident on the previous day when there was an altercation between her son-the deceased and accused No.3. This witness has also mentioned that she intervened in the dispute and pacified both the deceased and accused Nos.3 and 4 who had quarrel with him. She went one step ahead and requested accused No.5, who is the mother of the other accused, to restrain her sons. This witness has then narrated the assault which took place on 29th October 2000 on her son. She has said that accused No.3 gave a blow with an axe on the head of the deceased. Accused No.6 attacked him on his fingers with the sickle. Accused Nos.3 and 6 chased the victim. He started running after receiving a blow on the head. They caught up with the victim about 200 feet away from the place where they had first attacked him when the deceased fell over a pile of wooden logs. She has then stated that while she was running towards her son, accused No.5 pushed her down. By the time she reached her son, she found him dead. His left hand had been severed from the joint above the wrist.

5. PW9 is the Sarpanch who informed the police of the incident. In his examination-in-chief, he has stated that he rushed to the spot where the incident had occurred after hearing of it. He saw the dead body of the victim lying near the road. He states in his examination-in-chief that he learnt that the accused

No.6 had gone to the hospital as he was injured. He has spoken about the injuries sustained by the deceased and that the left hand of the deceased was completely severed. In the cross-examination, however, this witness states that he saw accused No.6 and found that he had sustained bleeding injuries on his head. People had tied a towel around his head. He was lifted into a jeep. This witness states that he then went to the village which is at a distance of one and half kms. from the scene of offence. He states that he saw the mother of the deceased i.e. PW4 going to the scene of offence from the village, shouting out and crying. The evidence of this witness does not inspire confidence. There are many contradictions in his testimony and, therefore, his evidence will have to be discarded.

6. PW10 is a neighbour who had witnessed the quarrel between Netaji and accused No.3 on the previous day. He has stated that he had advised both the deceased and the accused not to quarrel. This witness, therefore, has proved the animosity that the accused had towards the deceased.

7. Considering the evidence of PW4, PW9 and PW10, the picture that emerges is that the accused had a grievance against the deceased. They did not like the fact that the deceased was cutting the grass on the boundary between their two plots of land. They had an

altercation with the deceased the previous day when they had threatened him with dire consequences. The complainant had seen the assault on her son. Accused No.6 had also sustained injuries for which he was admitted in hospital. The prosecution would, therefore, have to explain the injuries on accused No.6.

8. Admittedly, there was a time lag between the PW4, the complainant seeing the first assault on her son and her seeing the dead body of her son. There is no evidence brought on record as to what transpired after the chase. There is also no evidence on record as to whether the deceased had struck PW6. Undoubtedly, the deceased was also carrying a sickle as he was working in the field. The learned Counsel appearing for the accused in this Appeal has contended that if one is to accept the prosecution theory that the deceased was assaulted by the accused on the head, he would have collapsed at that very spot and not been able to run a distance of 200 feet. The learned Counsel contends that the very fact that the accused had to chase the deceased for 200 feet indicated that it was possible that the deceased had struck accused No.6 and in fact a complaint had been lodged against him by the wife of accused No.6. The injury sustained by accused No.6 is "head injury and depressal - (L) Panital with cerebral contusions". Undoubtedly, this injury was grievous. The possibility of the deceased having inflicted this injury on accused

No.6 after sustaining the first blow cannot be ruled out. In all probability it was for this reason that the accused chased the deceased for about 200 feet when the deceased fell at the hurdle of the pile of wooden logs. It was there that both the accused then inflicted the fatal injuries on the deceased.

9. Two of the panch witneses who have been examined have turned hostile. These witnesses have proved the panchanama at Exhibit 30 regarding recovery of the axe and sickle at the instance of accused No.3. The panchanama indicates that the recoveries were made in the open field known as Gerwat. The panchanama shows that accused No.3 had led them to a tree near a canal in the field and had recovered the weapons which were covered with dry leaves. However, in the cross-examination, both PW6 and PW7 have denied that the recoveries were made at the instance of accused No.3. The other panchas examined have proved the inquest panchanama, spot panchanama and the recovery of the clothes of accused No.3.

10. These articles which have been seized were sent for chemical analysis. However, the investigating officers have not bothered to seal the samples of blood or the articles which were seized or the weapons recovered. The analysis of the blood stains on these articles and the weapons, therefore, cannot be accepted

as the possibility of these articles being tampered with cannot be ruled out. The reports of the chemical analysis indicated that all the articles bore blood stains of blood group "O" which was the blood group of the deceased. The towel which was wrapped around the head of accused No.6 also had blood stains of the blood group "O", although the blood group of accused No.6 is analysed as "A". This anomaly has not been explained by the prosecution and, therefore, the entire analysis of the Chemical Analyser in circumstances where articles have not been sealed is doubtful.

11. The Medical Officer who has been examined as PW5 has described the injuries sustained by the deceased. Besides the severing of the left hand, the deceased had suffered injuries on his head. This witness has stated that injury No.2 which is described thus : "C.L.W. 4 cm. in length, 1 cm. breadth, 1.05 cm. in deep over left parietal region" can be inflicted by hitting that part of the head against wood. She has also stated that the blow on the scalp which is injury No.1, must have been forceful as it had cut the skull bone and damaged the brain. She has opined that a person would be likely to fall with such an injury. The other injuries were inflicted by sharp objects, according to this witness. She has found that the injuries could have been inflicted by the axe and the sickle which were seized. Considering this evidence of the Medical Officer, it is

possible that the injury which was referred as injury No.2 was inflicted first on the deceased. This led to him wielding the sickle which was in his hand. On hearing his mother shout out to him to run away, he ran for a distance of 200 feet. The accused chased him and then struck the fatal blows. As seen from the evidence of the complainant, accused No.3 had inflicted a blow on the head of the deceased first. Accused No.6 inflicted injuries on his right hand. The deceased then ran away from the spot and was thereafter assaulted.

12. We have perused the impugned judgment and order. We have reappreciated the evidence on record and have arrived at the same conclusions. The submission of the learned Counsel for the accused that the prosecution has not explained the injuries on accused No.6 and, therefore, he should be acquitted cannot be accepted. Merely because accused No.6 had sustained injuries, it would not lead to an inference that he was not responsible for the death of the deceased together with accused No.3. The complaint was lodged against the deceased by the wife of Accused No.6 much later, in fact, at night on 29th October 2000. This would indicate that it was lodged only in retaliation to the the complaint lodged in the present case. Accused No.6 has not bothered to either examine himself before the trial Court nor to lead any evidence in rebuttal. In such circumstances, we are unable to accept the

submission of the learned Counsel for the accused that accused No.6 should be acquitted.

13. Having reappreciated the evidence on record, we are of the firm opinion that the trial Court has rightly concluded that accused Nos.3 and 6 are guilty of the dastardly assault on the deceased and has justifiably convicted them under Section 302 of the Indian Penal Code. There is no perversity in the judgment and order which is impugned. The learned Judge has considered all the necessary facts and evidence on record. We, therefore, confirm the impugned judgment.

14. Appeal dismissed.

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